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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,199	06/23/2001	David O'Leary	NHC0031A-USA	8435

530 7590 03/19/2007  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK  
600 SOUTH AVENUE WEST  
WESTFIELD, NJ 07090

EXAMINER
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PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/888,199

Applicant(s)

O'LEARY, DAVID

Examiner

Nihir Patel

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10.19.2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 16 is/are rejected.
- 7) ☒ Claim(s) 3-15 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on October 19<sup>th</sup>, 2006, with respect to claims 1-17 have been fully considered and are persuasive. The rejection(s) of the previous office action dating June 2<sup>nd</sup>, 2006 has been withdrawn.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Schaeffer et al. (US 6,065,471).
4. As to claim 1, Schaeffer teaches an apparatus that comprises a sealed reservoir 6 (see figure 4 and column 3 lines 15-20) including a dispensing port 8 (see figures 1, 2, and 4; column 3 lines 60-67); a channel 11a (the extended downwardly wall from the base is defined as the channel) communicating with the dispensing port and including a pressure relief port 11(see figures 1, 11 and 12; column 4 lines 5-15); a conduit 12 (see column 4 lines 10-20) providing fluid communication between an interior of the sealed reservoir 6 and the pressure relief port 11 of the channel 11a; a cup assembly 3 movably received in the channel and including a recess 22 (see figure 7 and column 4 lines 40-45) adapted to receive medicament when aligned with the dispensing port 8 (see column 5 lines 30-35), a first sealing surface

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adapted to seal the dispensing port when the recess is unaligned with the dispensing port (see column 5 lines 30-35), and a second sealing surface adapted to seal the pressure relief port when the recess is aligned with the dispensing port and unseal the pressure relief port when the recess is unaligned with the dispensing port (see column 5 lines 30-35).

5. As to claim 2, Schaeffer teaches an apparatus that includes the cup assembly 3 having a sealing spring 25 biasing the first sealing surface against the reservoir (see column 4 lines 40-50).

6. As to claim 16, Schaeffer teaches an apparatus wherein the reservoir includes a volume of dry powdered medicament (see column 3 lines 25-45).

*Allowable Subject Matter*

7. Claims 3-15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a reservoir that includes a collapsible bellows adapted to increase pressure within the interior of the reservoir upon being collapsed, when the pressure relief port is sealed. The prior art also does not teach a cup assembly that includes a cup received in a cup sled movable within the channel, the cup defining the recess and the first sealing surface, and the sled defining the second sealing surface.

*Claim Objections*

8. Claim 11 is objected to because of the following informalities: The word biasing needs to be corrected. Appropriate correction is required.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nihir Patel

*Patricia Bianco*  
PATRICIA BIANCO  
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1/22/07